and to what seems to be the more logical view. A recent case, *Alpha Realty & Rental Co.* v. *Randolph et al.* (Colo. 1912), 127 Pac. 245, contrary to the principal case, and in accord with the weight of authority, is noted in 11 MICH L. REV. 266.

WATERS—ACTION BY PROPERTY OWNER AGAINST WATER COMPANY FOR LOSS BY FIRE.—Defendant had entered into a contract with the city of S. to furnish water, among other purposes, for fire protection. It was further agreed that defendant should upon certain notice from the city, lay additional pipe and install new hydrants. Plaintiff, having been compelled to pay the amount of an insurance policy to an assured whose property in S. had been burned, sued defendant to recover damages alleged to have been suffered by reason of defendant's failure to put in new pipes and hydrants as ordered by the city pursuant to the contract. *Held* that plaintiff should not recover. *German Alliance Ins. Co.* v. *Home Water Supply Co.*, (1912) 33 Sup. Ct. 32.

Unfortunately the court was not called upon to decide the correctness of the court's dictum in *Guardian Trust & D. Co.* v. *Fisher*, 200 U. S. 57, 50 L. ed. 367, 26 Sup. Ct. 186, to the effect that for negligent failure on part of a private water company to furnish sufficient pressure in the hydrants there is a liability of the company in tort for damages thereby suffered by a property owner whose property is destroyed by fire. The court said in the principal case that the action was "not for negligence in operating the plant, but for breach of the contract of construction." See as to the general question 5 MICH. L. REV. 362; 8 MICH. L. REV. 485.

WILLS—ESTATES DEVISED—CONDITIONAL FEE AT COMMON LAW.—A man by his will devised land to his son and to the heirs of his own body. The son died without having gotten any issue. *Held* that this was a fee conditional at common law, and the condition having been fulfilled, the land reverted to the heirs of the original testator. *Sagers* v. *Sagers* (Iowa, 1912) 138 N. W. 911.

A fee conditional at common law is an estate limited to particular heirs, as of the body of the donee. The condition is that if donee die without such heirs, the estate shall revert to the grantor and his heirs; but after the birth of the particular issue to the donee he was held to have a fee simple, in so far that he might charge or alien the land as a fee simple or forfeit it for treason. *Brian's case*, 34 Edw. III; ROOD, CASES ON PROPERTY (2d ed.) 56; 1 Plowd. 227, 241; 2 BL. COM 111; 1 SPENCE, EQ. JUR. 141; *Croxall* v. *Sherrard*, 5 Wall. 268; *Pierson* v. *Lane*, 60 Ia. 60. Such alienation must take effect during the life of the life tenant, wherefore such cannot devise his fee conditional. *Jones* v. *Postell*, Harp. L. 92; *Burnett* v. *Burnett*, 17 S. C. 545. Nor can he covenant to stand seized to himself for life, remainder to J. S. in fee. *Bedingfield's Case*, Cro. Eliz. 895; *Machil* v. *Clark*, 2 Salk. 619; *Seymour's Case*, 3 Rep. 84b, 10 Rep. 96a. After birth of issue, husband may have curtesy in fee conditional to his wife. *Wright* v. *Herron*, 5 Rich. Eq. 441; *Withers* v. *Jenkins*, 14 S. C. 597; BAC. ABR. tit. Curtesy: and the wife may have dower in a like case, Yearbooks (Pike) 33 and 34 Edw. III,

page 286; ROOD, CASES ON PROPERTY (2d ed.) 56. And if the donee at the time of the alienation had no issue, but after the alienation had such issue, such alienation would not bind the original donor, but the donor should have his formedon in reverter. 1 Plowd. 235; BROOKE, ABR., Formedon 69; Co. LITT. 19a. But the donee before such issue born could encumber or alien the estate so as to bind his issue. *Izard* v. *Izard,* Bail. Eq. 228; *Rowland* v. *Warren,* 10 Ore. 129; FITZ. ABR., Formedon 61. And if the donee had had such issue but had none at the time of the alienation, the donor's right of reverter was not thereby cut off. FITZ. ABR. 65; Anon. ROOD, CASES ON PROPERTY (2d ed.) 55; 1 GRAY, CASES ON PROPERTY, 334; *Barksdale* v. *Gamage,* 3 Rich. Eq. 271. In England, the fee conditional was abolished by STATUTE OF WESTMINSTER, 2ND, 13 Edw. 1: and in the United States exists only in Iowa, South Carolina, and probably Oregon. In most states what would otherwise be such a fee has been made by statute a fee simple to the first donee, or a life estate to him and a contingent remainder to his issue of the class described, which latter vests as soon as such issue is born. *Amos* v. *Amos,* 117 Ind. 19, and cases cited.